DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for the Debtor
One North Lexington Avenue
White Plains, NY 10601
(914) 681-0200
Erica R. Aisner, Esq.

Hearing Date: May 10, 2017
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

SAMUEL JOSEPH GIOSEFFI, JR.,

Debtor
--X

Chapter 13
Case No. 16-23249-rdd

DEBTOR'S MOTION FOR AN ORDER, PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE: (I) AUTHORIZING AND APPROVING CONTRACT SALE OF THE DEBTOR'S INTEREST IN 72 OAKLAND AVENUE, HARRISON, NEW YORK 10528; (II) AUTHORIZING THE CONSUMMATION OF THE TRANSACTION CONTEMPLATED THEREIN; (III) UPON CLOSING, AUTHORIZING THE PAYMENT OF THE BROKER COMMISSION TO HOULIHAN LAWRENCE AND TO THE DEBTOR OF HIS HOMESTEAD EXEMPTION, AND (IV) GRANTING RELATED RELIEF

TO: HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

The above-captioned Chapter 13 Debtor, Samuel Joseph Gioseffi, Jr., (the "Debtor"), by his attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, hereby submit this motion (the "Motion") seeking the entry of an order (the "Sale Order"), pursuant to sections 105 and 363 of Title 11 of the United States Code, 11 U.S.C. §§101 *et seq.* (the "Bankruptcy Code"): (i) approval of the contract on the sale of the Debtor's interest in 72 Oakland Avenue, Harrison, New York 10528 (the "Property"); (ii) authorizing the consummation of the transaction contemplated therein; (iii) upon closing, authorizing the payment of the broker commission to

Houlihan Lawrence (the "Broker") under Exclusive Right to Sell Agreement and to the Debtor on account of his statutory homestead exemption; and (iv) granting related relief. In support of the Motion, the Debtor respectfully represents and set forth as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this proceeding to 28 U.S.C. § 157(a) and 1334.

2. Venue is proper pursuant to 28 U.S.C. § 1408 and 1409.

3. This is a core proceeding pursuant to 28 U.S.C. § I 57(b)(2)(A) and (0).

4. This proceeding has been made pursuant to §§105 and 363 of the Bankruptcy Code.

BACKGROUND

5. On September 14, 2016, (the "Petition Date") the Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code.

6. Thereafter the instant proceeding was referred to your Honor for administration under the Code.

7. Jeffrey L. Sapir has been appointed as Chapter 13 trustee in this proceeding.

8. On or about September 28, 2016, the Debtor filed his Schedules of Assets and Liabilities. The Debtor listed on his Schedule A- Real Property his primary residence located at 72 Oakland Avenue, Harrison, New York 10528 Harrison, New York 10528.

9. On or about September 28, 2016, the Debtor filed his Chapter 13 plan, which provided for monthly payments of $50.00 per month. The Debtor intends to amend his Chapter 13 plan to include a lump sum payment of from the sale of the Debtor's primary residence once

specific payoff amounts are obtained which will confirm the remaining sale proceeds available for distribution by the Chapter 13 trustee.

10. On or about, November 22, 2016, an Order was entered by the Court authorizing the retention of Broker by the Debtor [Docket No. 21]. Shortly thereafter after, the Broker listed the Property for sale and began a marketing campaign.

11. On or about March 8, 2017, an Order was entered authorizing the retention of Law Offices of Frank P. Allegretti, Esq. as Real Estate Counsel to the Debtor (the "Real Estate Counsel") [Docket No 27].

12. The Debtor received an offer to purchase the Property, which was procured by the Broker. The Broker, on behalf of the Debtor, finalized negotiations for a sale of the Property to Michael Josephson and Christine Josephson (the "Purchasers") in the amount of Six Hundred Twenty Thousand Dollars ($620,000.00, the "Purchase Price"), with a down payment in the amount of Sixty Two Thousand Dollars ($62,000.00). The balance due at the time of closing is Five Thousand Fifty Eight Dollars ($558,000.00), subject to ordinary course adjustments. A copy of the executed Contract of Sale (the "Contract"), is annexed hereto as **Exhibit "A"**.

RELIEF REQUESTED AND BASIS FOR RELIEF

A. Justification for a Private Sale

13. By this Motion, the Debtor seeks (i) approval of the Contract, (ii) authorizing the consummation of the transaction contemplated therein; (iii) upon closing, authorizing the payment of the broker commission to Broker under the Broker Agreement and to the Debtor of his statutory homestead exemption; and (iv) granting related relief.

14. The Debtor listed the value of the Property on Schedule A of his Bankruptcy Petition as $599,999, which was based on the listing price of the Property. The Purchaser offer is the highest and best offer received to date for the Property. Given the extensive marketing of the Property, the Debtor believes that the Purchaser's offer represents the fair market value of the Property.

15. PNC Bank, National Association (the "PNC Bank") holds a first mortgage on the Property. According to the Proof of Claim number 5-1 filed by PNC in this Chapter 13 case, the balance on the Petition Date was $167,266.29. A copy of the Proof of Claim filed by PNC is annexed hereto as **Exhibit "B".**

16. There are liens filed against the property which arise out of New York State tax warrants and well as State and Family Court judgments[1] which total approximately $208,585.42 and a small civil judgment in the amount of $3,905.06 (face value, not including accrued statutory interest). A copy of said judgment liens are annexed hereto as **Exhibit "C."**

17. The deadline to file claims in this Chapter 13 case expired on January 26, 2017. A copy of the Debtor's claims register reflecting creditors that have filed a timely claim is annexed hereto as **Exhibit "D"**.

18. The Debtor's estimates, that after various closing costs, payment of broker commission, ordinary course adjustments, judgment liens and homestead exemption that the net remaining sale proceeds will be more than sufficient to pay all remaining claims in the estate in full with a return to the Debtor of surplus funds.

---

[1] It is unclear at this point whether or not the proof of claim filed by Child Support Enforcement (no. 1) is duplicative of the Family Court Judgments in favor of Karen Marshall however, this is currently being investigated by Debtor's counsel.

19. The net sale proceeds as set forth above shall be remitted to the Chapter 13 trustee for distribution to the Debtor's creditors (which have not otherwise been satisfied at closing) and Chapter 13 plan funding, with the remaining surplus to be returned to the Debtor.

B. **Basis for Approving a Private Sale**

20. Section 363(b) of the Bankruptcy Code provides, in pertinent part, that the Debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate". 11 U.S.C. §363(b)(1).

21. While many section 363 sales are conducted under competitive bidding procedures, there is no requirement in section 363 of the Bankruptcy Code to do so.

22. In fact, Bankruptcy Rule 6004(f) specifically contemplates private sales with the statement that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction".

23. Here, the Property has been marketed by a real estate professional on the open market. It has been listed on the multiple listing service, available to the public via the internet, shown to numerous interested parties. These efforts resulted in a purchase price in excess of the listing price and more than sufficient to pay all creditors in full with a return of surplus to the Debtor.

24. Given the Purchase Price far exceeding all of the Debtor's liabilities, and the Debtor's ability to fully satisfy all of its creditors from the sale, the Debtors respectfully submit that a private sale of the Property is appropriate and should be approved.

25. Further, the Contract is the product of good faith, arm's length negotiations between unrelated parties. Consequently, the Debtor requests that this Court find that these

negotiations were in good faith and that the Purchaser is a "good faith purchaser" under §363(m) of the Bankruptcy Code.

C. Approval of the Broker's Commission

26. The Debtor also seeks herein approval and authority under Section 327(e) of the Bankruptcy Code to pay the Broker's commission in the amount of $24,800.00. The commission represents the agreed 4% of the gross sale price, as provided for in the Broker's agreement which was approved by the Court in connection with the retention of the Broker.

27. The Debtor believes that the earned Broker's commission is reasonable in light of the substantial benefit that has been conferred upon the estate and the Debtor.

28. The Debtor further requests authority to pay the earned Broker's commission at closing on the sale. The Debtor respectfully submits that the Court has the requisite authority to grant such related relief pursuant to Sections 363(b) and 105 of the Bankruptcy Code.

29. Section 105 of the Bankruptcy Code provides as follows:

> "(a) The court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title."

30. For the foregoing reasons, the Debtor requests entry of an order authorizing him to pay the Broker's commission at the closing.

NOTICE

31. Notice of this Motion has been provided to: (i) the Chapter 13 trustee, (ii) Counsel to the Purchaser, (iii) all creditors, and (iv) any party having filed a notice of appearance and request for service of papers filed in this case. The Debtor submits that said notice is adequate and proper.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order: (i) approving the sale of the Debtor's Property; (ii) authorizing the consummation of the transactions contemplated therein; and (iii) upon closing, authorizing the payment of the Broker under the Exclusive Right to Sell Agreement and payment of the Debtor's homestead exemption, together with such other and further relief as is just and proper under the circumstances.

Dated: White Plains, New York
April 19, 2017

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for the Debtor
One North Lexington Avenue
White Plains, NY 10601
(914) 681-0200

By: */s/ Erica R. Aisner*
Erica R. Aisner